



ARIZONA STATE SENATE
Fifty-Fifth Legislature, First Regular Session

FACT SHEET FOR S.B. 1377

civil liability; public health pandemic

Purpose

Establishes, retroactive to March 11, 2020, civil liability standards for specified acts or omissions during a state of emergency for a public health pandemic.

Background

The Governor may proclaim a state of emergency that takes effect immediately in an area affected or likely to be affected if the Governor finds that circumstances exist meeting the statutory definition of a *state of emergency* ([A.R.S. § 26-303](#)). On March 11, 2020, the Governor issued a [declaration of emergency](#) and issued an [executive order](#) related to the spread of COVID-19. The Governor has since issued additional [executive orders](#) relating to COVID-19.

Health care institution is statutorily defined as every place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health services, health screening services, other health-related services, supervisory care services, personal care services or directed care services and includes home health agencies, outdoor behavioral health care programs and hospice service agencies. Health care institution does not include a community residential setting ([A.R.S. § 36-401](#)). A *health professional* includes a person who is certified or licensed pursuant to enumerated statutes ([A.R.S. § 32-3201](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Public Health Pandemic Civil Liability

1. Precludes from liability for damages, during a public health pandemic state of emergency declared by the Governor, a person or provider who acts in good faith to protect a customer, student, tenant, volunteer, guest or neighbor, or the public (a litigant), from injury from the public health pandemic for injury, death or loss to person or property that is based on a claim that the person or provider failed to protect the litigant from the effects of the public health pandemic, unless it is proven by clear and convincing evidence that the person or provider failed to act or acted with willful misconduct or gross negligence.
2. Establishes a presumption that a person or provider acted in good faith and adopted and implemented reasonable policies or practices if the person or provider relied on and reasonably attempted to comply with applicable published guidance relating to the public health pandemic that was issued by a federal or state agency.
3. Allows a party to introduce other evidence that proves the person or provider acted in good faith and adopted and implemented reasonable policies or practices.

4. Applies the standard for liability to all causes of action that are brought after the general effective date for an act or omission by a person or provider that occurred between March 11, 2020, and December 30, 2022, and that relates to a public health pandemic that is the subject of the state of emergency declared by the Governor.
5. Exempts claims for workers compensation from the outlined liability standard.
6. Defines *provider* as:
 - a) a person who furnishes consumer or business goods or services or entertainment;
 - b) an educational institution or district;
 - c) a school district or charter school;
 - d) a property owner, property manager or property lessor or lessee;
 - e) a nonprofit organization;
 - f) a religious institution;
 - g) the state or a state agency or instrumentality;
 - h) a local government or political subdivision, including a department, agency or commission of a local government or political subdivision;
 - i) a service provider;
 - j) a health professional; or
 - k) a health care institution.

Health Professionals and Health Care Institutions

7. Precludes from liability for damages, during a public health pandemic state of emergency declared by the Governor, a health professional (professional) or health care institution (institution) that acts in good faith in any civil action for an injury or death that is directly or indirectly sustained because of the professional's or institution's action or omission while providing health care services in support of the state's response to the state of emergency, unless it is proven by clear and convincing evidence that the professional or institution failed to act or acted with willful misconduct or gross negligence.
8. Applies the outlined limited liability to any action or omission that occurs:
 - a) during a person's screening, assessment, diagnosis or treatment and that is related to the public health pandemic that is the subject of the state of emergency; or
 - b) in the course of providing a person with health care services and that is unrelated to the public health pandemic that is the subject of the state of emergency if the professional's or institution's action or omission was in good faith support of the state's response to the state of emergency, including:
 - i. delaying or canceling a nonurgent or elective dental, medical or surgical procedure;
 - ii. providing nursing care or procedures;
 - iii. altering a person's diagnosis or treatment in response to an order, directive or guideline that is issued by the federal government, the state or a local government; or
 - iv. an act or omission undertaken by a professional or institution because of a lack of staffing, facilities, equipment, supplies or other resources that are attributable to the state of emergency and that render the professional or institution unable to provide the level or manner of care to a person that otherwise would have been required in the absence of the state of emergency.

9. Establishes a presumption that a professional or institution acted in good faith if the professional or institution relied on and reasonably attempted to comply with applicable published guidance relating to the public health pandemic that was issued by a federal or state agency.
10. Allows a party to introduce any other evidence that proves the health professional or health care institution acted in good faith.
11. Applies the standard for liability to all causes of action that are brought after the general effective date for an act or omission by a person or provider that occurred between March 11, 2020, and December 30, 2022, and that relates to a public health pandemic that is the subject of the state of emergency declared by the Governor.
12. Exempts claims for workers compensation from the outlined liability standard.

Miscellaneous

13. Contains a *severability clause*.
14. Defines key terms.
15. Becomes effective on the general effective date, retroactive to March 11, 2020.

Prepared by Senate Research

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JA/gs